

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA,	§	
	§	
Plaintiff-Respondent,	§	
	§	
V.	§	CRIMINAL ACTION NO. H-02-627-1
	§	CIVIL ACTION NO. H-04-3616
DENNIS SONGALIA FLORES,	§	
	§	
Defendant-Movant	§	

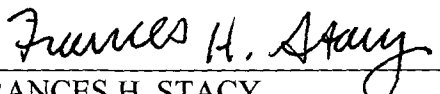
MEMORANDUM AND RECOMMENDATION

Before the Magistrate Judge in this federal habeas corpus proceeding pursuant to 28 U.S.C. § 2255 is Movant Dennis Songalia Flores' § 2255 Motion to Vacate, Set Aside or Correct Sentence (Document No. 47) and Memorandum in Support thereof (Document No. 48), in which Movant attacks his sentence and conviction, which was entered on April 18, 2003. According to the docket sheet, on June 28, 2005, the Fifth Circuit Court of Appeals remanded the matter for re-sentencing, which has since taken place, and an Amended Judgment has been entered. Because Movant, through this § 2255 proceeding was attacking his original conviction and sentence, which has now been vacated, his § 2255 motion is moot. As such, the Magistrate Judge RECOMMENDS that Movant Dennis Songalia Flores' § 2255 Motion to Vacate, Set Aside or Correct Sentence (Document No. 47) be DENIED as MOOT.

The Clerk shall file this instrument and provide a copy to all counsel and unrepresented parties of record. Within 10 days after being served with a copy, any party may file written objections pursuant to 28 U.S.C. § 636(b)(1)(C), Fed.R.Civ.P. 72(b), and General Order 80-5, S.D. Texas.

Failure to file objections within such period shall bar an aggrieved party from attacking factual findings on appeal. *Thomas v. Arn*, 474 U.S. 140 (1985); *Ware v. King*, 694 F.2d 89 (5th Cir. 1982), *cert. denied*, 461 U.S. 930 (1983); *Nettles v. Wainwright*, 677 F.2d 404 (5th Cir. 1982) (en banc). Moreover, absent plain error, failure to file objections within the ten day period bars an aggrieved party from attacking conclusions of law on appeal. *Douglass v. United Services Automobile Association*, 79 F.3d 1415, 1429 (5th Cir. 1996). The original of any written objections shall be filed with the United States District Clerk, P.O. Box 61010, Houston, Texas 77028.

Signed at Houston, Texas, this 7th day of June, 2006.


FRANCES H. STACY
UNITED STATES MAGISTRATE JUDGE